IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 89 of 2007.

Date of decision: 16.7.2009

Baldev .. Petitioner

Versus

Financial Commissioner (Appeals) & Ors. .. Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.
The Hon'ble Mr.Justice Surinder Singh, J.

Whether approved for reporting ? No.

For the petitioner: Mr.Ramakant Sharma, Advocate.

For the respondents: Sh.R.M.Bisht, Dy.Advocate General for respondents No.1 to 3.
Mr.Haresh Sood, Advocate vice Mr.Rajiv Jiwan, Advocate for respondents No.5 and 6

Deepak Gupta, J.(Oral)

The petitioner has filed this writ petition whereby he has challenged the order of the Land Reforms Officer dated 25.1.1999, the order of the Sub Divisional Collector, Ghumarwin dated 16.7.2001 and the order of the Financial Commissioner (Appeals), H.P. dated 12.9.2006.

It appears from a reading of Annexure P/1 that the petitioner filed an application under Section 104(4) of the H.P Tenancy and Land Reforms Act, 1972 before the Land Reforms Officer in which he claimed that the entries

in the revenue record depicting the private respondents No.4 to 9 as 'Gair Moorusie' are incorrect. This issue was decided against the petitioner by the Land Reforms Officer by the impugned order dated 25.1.1999.

Surprisingly, instead of filing an appeal under the provisions of the H.P Tenancy and Land Reforms Act, the petitioner chose to file an appeal under Section 14 of the H.P Land Revenue Act. This appeal was rejected on 16.7.2001. Thereafter, the petitioner filed a revision petition, again under Section 17 of the H.P Land Revenue Act, which was also rejected. When the initial order had been passed under the H.P Tenancy and Land Reforms Act, it is not understood how the appellate proceedings could have been initiated under the H.P Land Revenue Act or decided thereunder. The petitioner obviously approached a wrong forum for redressal of his grievances. Two officers who dealt with the matter did not take into consideration the fact that in fact the appeal/revision before them was not maintainable under the H.P Land Revenue Act. It is also not very clear whether the officers who decided these matters had jurisdiction under the H.P Tenancy and Land Reforms Act or not. It is obvious that these orders are without

jurisdiction and are accordingly held to be non est and any findings given therein are not binding upon any party.

However, the initial order passed by the Land Reforms Officer continues to stand. Faced with this situation, Sh.Ramakant Sharma, learned counsel for the petitioner prayed that he may be permitted to file an appeal under the H.P Tenancy and Land Reforms Act before the appropriate authority. This is something for the petitioner to decide and it is always open to any party to challenge a decision which is against the said party. In case such an appeal is filed, it shall be the right of the respondents to contest the appeal on all grounds available to them including the place of limitation.

With these observations, the writ petition is disposed of. No order as to costs.

(Deepak Gupta)
Judge

July 16, 2009 **(Surinder Singh)**
(m) **Judge**